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SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7645  
WWW.SWIDLAW.COM

NEW YORK OFFICE  
919 THIRD AVENUE  
NEW YORK, NY 10022-9998  
(212) 758-9500 FAX (212) 758-9526

December 2, 1999

VIA FEDERAL EXPRESS

Ms. Magalie Román Salas, Secretary  
Federal Communications Commission  
The Portals  
445 121h Street, S.W.  
Washington, D.C. 20554

RECEIVED

DEC - 2 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: RCN Telecom Services, Inc.'s Comments in Support of MCI WorldCom's  
Petition for Reconsideration in the Matter of Implementation of the  
Telecommunications Act of 1996. Telecommunications Carrier's Use of  
Customer Proprietary Network Information and Other Customer Information, CC  
Docket No. 96-115 and Docket No. 96-149**

Dear Ms. Román Salas:

RCN Telecom Services, Inc., by its undersigned counsel, respectfully submits comments in support of an earlier petition filed by MCI WorldCom in the above-captioned matter. An original and seven (7) copies of this filing are enclosed. Please date stamp the enclosed extra copy of this filing and return it in the self-addressed stamp envelope provided herein.

Please do not hesitate to contact William L. Fishman at (202) 945-6986 should you have any questions or concerns regarding this matter.

Respectfully submitted,



William L. Fishman  
Counsel for RCN Telecom Services, Inc.

Enclosure

cc: Joe Kahl (RCN)  
Phillip Macres  
Michael Schunck

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**Before the  
Federal Communications Commission  
Washington, DC 20554**

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**DEC - 2 1999**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Telecommunications Act of 1996	)	
	)	
	)	CC Docket No. 96-115
Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information;	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended	)	CC Docket No. 96-149
	)	

**COMMENTS OF RCN TELECOM SERVICES, INC.**

RCN Telecom Services, Inc. ("RCN"), through its undersigned counsel and pursuant to the Federal Communication Commission's ("Commission") *Public Notice*,<sup>1</sup> hereby submits comments in support of MCI WorldCom's ("MCI") Petition filed with the Commission on November 1, 1999, in the above-captioned docket. RCN suggests that the Commission further revise its rules on Customer Proprietary Network Information ("CPNI") as elaborated below, to render them pro-competitive and competitively neutral by mandating earlier CPNI access, easing consent form restrictions, and allowing consumers to be informed of the value of their CPNI.

RCN is a facilities-based competitive local exchange carrier serving residential and business customers. RCN provides a full range of voice and broadband services over its own facilities-based network. The company is currently providing local and long distance telephone, broadband video and Internet services in several markets from Boston to Washington, D.C. RCN's parent company is certificated as a competitive local exchange carrier ("CLEC") in a total of fourteen states.

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<sup>1</sup> 64 Fed. Reg. 221 (Nov. 17, 1999).

In its petition, MCI asks the Commission to enable earlier access to consumer service provisioning information by permitting simple, general forms for requesting consumer consent; to allow such customer consent to be extended to affiliate and successor firms; and to be permitted to inform customers of the importance of granting access to their CPNI. RCN agrees with MCI that early access to CPNI is necessary before CLECs will be able to compete on equal terms with the incumbents. Without early access to CPNI, competitive carriers are handicapped in seeking to build a customer base on a scale that will permit viable local competition. Particularly, the Commission should permit access to customer provisioning profiles early in a CLECs' marketing efforts to acquire new subscribers. In addition, the Commission should clarify that customer consent, once acquired, unambiguously extends to subsequent transactions between the parties, their affiliates and successors. The present rule<sup>2</sup> requires CLECs to engage in palmistry – having to anticipate, compile and recite all possible future uses of a particular instance of consumer CPNI.

Finally, the current rules adopted by the Commission do not level the playing field for CLECs with respect to control over CPNI. The overwhelming incumbent advantage the pro-competitive provisions of the Telecommunications Act of 1996<sup>3</sup> were intended to overcome persists where incumbents can maintain an information barrier, about which competitive carriers may not warn consumers. CLECs need to be allowed to warn customers that denial of CPNI access will have a negative impact on the ability of these providers to inform them of superior rates and services and may even lead to service disruption upon migration to a CLEC.

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<sup>2</sup> *In the Matter of Implementation of the Telecommunications Act of 1996. Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information.* Order on Reconsideration and Petitions for Forbearance. CC Docket No. 96-115 and 96-149 at ¶ 115 (rel. September 3, 1999).

<sup>3</sup> 47 U.S.C. § 202 *et seq.* (1999).

**I. The Commission Should Act to Harmonize the Twin Goals of Safeguarding Competition and Consumer Privacy**

The Commission's CPNI rules<sup>4</sup> aim to bridge the pro-competitive provisions of the Act<sup>5</sup> on the one hand and its consumer-protective and privacy aims on the other.<sup>6</sup> The Commission should act in response to MCI's petition to reform its CPNI rules to protect consumer interest in a competitive level playing field. As noted by MCI, the experience of competitive carriers demonstrates that the balance of consumer protection and marketplace flexibility is still not being struck in the manner envisioned by Congress or the Commission. Rather, the current CPNI rules are being employed by ILECs to protect themselves against CLEC challengers by denying timely access to CPNI essential for market access. This harms competition and consumers who would otherwise avail themselves of the choices available in the local telecommunications marketplace and thereby foster competition among carriers.

**II. Pre-consent Availability of Customer Provisioning Profiles Would Enhance Local Competition and Empower Consumers**

RCN agrees with MCI that early access to CPNI is crucial to bringing competitive services to potential subscribers. Withholding adequate provisioning information from CLECs tends to lock consumers into incumbent service and prevents their taking advantage of lower-priced and innovative competitive services. RCN's experience as a competitive carrier in a number of states is similar to that of MCI. RCN has found that the unavailability of timely CPNI information (particularly of provisioning profiles) constitutes a formidable barrier to entry. Lack of access to this information frustrates consumer interest in comparison-shopping and inhibits customer willingness to migrate

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<sup>4</sup> *Supra* Note 2.

<sup>5</sup> 47 U.S.C. §§ 251 (Interconnection), 252 (Procedures for Negotiations), § 271 (Bell Operating Company Entry into Inter-LATA Service) (1999).

<sup>6</sup> 47 U.S.C. § 222 (1999).

to a competitive carrier. The net effect of this situation is to strengthen the ability of ILECs to retain customers by withholding from these customers their own provisioning profiles and so preclude rational consumer choices in the marketplace. The current restrictions on customer provisioning profiles<sup>7</sup> are contrary to the spirit of the Act, preventing consumer access to information ostensibly theirs and preserving an information monopoly in the hands of the incumbent providers.

RCN concurs with MCI that customers would prefer seamless migration from one provider to another -- which requires the ability to keep intact their service profiles and options (“migrate-as-is”). Where the inability to access provisioning profiles results in obstacles to migration and, from the customer perspective, prevents a seamless move, the competitive aims of the law are stymied. RCN suggests that the Commission require – early enough for meaningful comparison – the disclosure of provisioning profiles to the customer and thus also to competing carriers for the specific purposes of enabling comparison shopping and seamless migration.

### **III. The Current Rules on Obtaining Consent Create Legal Uncertainty While Providing No Corresponding Consumer Benefit.**

The Commission should also act to clarify and extend to commercially reasonable boundaries the scope of customer consents. The current rules<sup>8</sup> do not actually protect customers beyond what a simpler rule might accomplish, while creating substantial uncertainty for CLECs regarding the breadth of the consent obtained. RCN suggests the Commission mandate a simple and clear consent request phrased in general language and not limited to specific users and time periods. Despite requiring a lengthy “laundry list” consent script covering each type of CPNI as well as who may view it, the current rules<sup>9</sup>

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<sup>7</sup> *Supra* Note 2 at ¶¶ 86-92.

<sup>8</sup> *Supra* Note 2 at ¶ 115,116.

<sup>9</sup> *Supra* Note 8.

fail to secure legal certainty in a real world setting. The central difficulty of these rules lies in their static *ex-ante* assumptions. Rather than providing significant consumer control over individual CPNI, the primary impact of the current rules is to stifle CLEC acquisition of new subscribers.

The value of customer CPNI is contextual. Access to a consumer's CPNI profile creates a momentary snapshot of that customer's service preferences whose accuracy declines quickly over time. After several billing cycles or a provider change, the information is outdated. Thus the scope of customer consent is self-limiting over time and does not require the cumbersome safeguards now mandated. More significantly from the provider perspective, the entities to which the customer's consent is given are subject to change. Where a CLEC expands the range of services it is able to offer, either on its own or through a subsidiary or acquisition, these organic successors of the original requestor to whom a customer allowed access to his or her CPNI should be covered by that consent. By not permitting the devolution of customer consent to successor entities and services, the Commission implicitly favors incumbent service providers, since that sector of the telecommunications industry is not characterized by the same entrepreneurial dynamic as is found among competitive carriers. RCN suggests that, given the self-limiting nature of CPNI information over time, allowing customer consent to be phrased more broadly is not likely to burden consumer privacy interests, while bringing innovative product and service information to the consumer far more effectively and quickly.

**IV. Allowing the Incumbent Operator to Hold Hostage a Consumer's CPNI Record Creates a Danger of Service Delays and Interruptions of Which the Consumer Should Be Warned**

Designed to prevent marketing abuses through pressure tactics, the “no-warn” rule<sup>10</sup> in the current context is too restrictive. The Commission should revise its rules to permit informing consumers of the role CPNI plays in switching over their services correctly and seamlessly and without unnecessary delays. The current rules serve to perpetuate the information asymmetry existing in favor of incumbent providers while keeping consumers ignorant of the control which the ILEC exercises over their CPNI for its own purposes unrelated to the consumer-protection aims of Section 222.<sup>11</sup> Since consumers are only superficially aware of their CPNI and its uses, they should be informed that, without granting CPNI access to a CLEC, a smooth service migration is difficult to accomplish. The consumer thus should be entitled to a statement informing him or her that the CPNI maintained about him or her by the local ILEC is crucial to the ability to take advantage of competing service offerings and cannot be replicated from other sources without difficulty.

Accordingly, competitive carriers need to be allowed to warn customers that denial of CPNI access will negatively impact the provision of service to such customers if they choose to leave the incumbent provider. Doing so would alert consumers to the vital importance such information plays and put them in control of decisions regarding the uses of *their* CPNI. The Commission should permit the free exchange of information regarding the importance and uses of a consumer's CPNI between the individual and a competitive carrier seeking their business.

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<sup>10</sup> *Supra* Note 3.

<sup>11</sup> 47 U.S.C. § 222 (1999).

## V. Conclusion

For the foregoing reasons, the Commission should take affirmative action to level the playing field for competitive service providers by loosening the choke hold on CPNI information now exercised by incumbent carriers under the guise of consumer protection measures. The Commission has taken some initial steps in this direction by revising its original rules,<sup>12</sup> simplifying them while “preserving the consumer protections mandated by Congress . . .”<sup>13</sup> Now the Commission should take a further step. The current situation does not in fact benefit consumers of local telecommunication services but frustrates a functioning marketplace in local telecommunications. The pro-competitive rule changes proposed in these comments seek to enhance the development of market mechanisms in local telecommunications services and to empower consumers to benefit therefrom.

Respectfully submitted,



William L. Fishman  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5116  
(202) 424-7500 (tel)  
(202) 424-7645 (fax)

Counsel for RCN Telecom Services, Inc.

Dated: December 2, 1999

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<sup>12</sup> *In the Matter of Implementation of the Telecommunications Act of 1996. Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*. Second Report and Order and Further Notice of Proposed Rulemaking. CC Docket 96-115 and 96-149 (rel. February 26, 1998). The 10<sup>th</sup> Circuit, in *US West v. FCC* (No. 98-9518, filed August 18, 1999) vacated this Order on First Amendment Grounds.

<sup>13</sup> *Supra* Note 3 at 4.



**CERTIFICATE OF SERVICE**

I, Denise Robinson, do certify that on December 2, 1999, copies of the accompanying Comments of RCN Telecom Services, Inc. were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

  
Denise Robinson

**CERTIFICATE OF SERVICE**

I, Denise Robinson, do certify that on December 2, 1999, copies of the accompanying Comments of RCN Telecom Services, Inc. were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

\_\_\_\_\_  
Denise Robinson

Larry Strickling \*\*  
Chief, Common Carrier Bureau  
Federal Communications Commission  
Portals  
445 12th Street, S.W.  
Washington, D.C. 20554

Judith St. Ledger-Roty  
Lee A. Rau  
Reed Smith Shaw & McClay  
1301 K Street, N.W., Suite 1100 - East  
Tower  
Washington, D.C. 20005

Carol Matthey \*\*  
Chief, Policy Division  
Federal Communications Commission  
Portals  
445 12th Street, S.W.  
Washington, D.C. 20554

Pamela Riley  
AirTouch Communications, Inc.  
One California Street  
San Francisco, CA 94111

Margaret Egler \*\*  
Deputy Chief, Policy Division, CCB  
Federal Communications Commission  
Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Mark J. Golden  
Vice President of Industry Affairs  
Personal Communications Industry  
Association  
500 Montgomery Street, Suite 700  
Alexandria, VA 22314-1561

Bill Agee \*\*  
Policy Division, CCB  
Federal Communications Commission  
Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Philip F. McClelland  
Assistant Consumer Advocate  
Office of Attorney General  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

International Transcription Service\*\*  
1919 M Street, N.W. Suite 214  
Washington, D.C. 20554

Mark Cooper  
Consumer Federation of America  
1424 16<sup>th</sup> Street, N.W.  
Suite 604  
Washington, D.C. 20036

Carl W. Northrop  
Christine M. Crowe  
Paul, Hastings, Janofsky & Walker  
1299 Pennsylvania Avenue, N.W.  
101 Floor  
Washington, D.C. 20004-2400

Assemblyman Anthony J. Genovesi  
Legislative Office Building  
Room 456  
Albany, NY 12248-0001

Jim Smith  
Excel Telecommunications, Inc.  
1133 Connecticut Avenue, N.W.  
Suite 750  
Washington, D.C. 20036

Jonathan E. Canis  
Reed Smith Shaw & McClay  
1301 K Street, N.W., Suite 1100  
East Tower  
Washington, D.C. 20005

Thomas K. Crowe  
Law Office of Thomas K. Crowe  
2300 M Street, N.W. Suite  
800 Washington, D.C. 20037

Glenn S. Rabin  
ALLTEL Corporate Services, Inc.  
655 15<sup>th</sup> Street, N.W.  
Suite 200  
Washington, D.C. 20005

David J. Gudino  
GTE Service Corporation  
1850 M Street, N.W.  
Suite 1200  
Washington, D.C. 20036

Cindy Z. Schonhaut  
Vice President, Government Affairs  
INTELCOM GROUP (U.S.A.), INC.  
9605 East Maroon Circle  
Englewood, CO 80112  
Richard McKenna  
600 Hidden ridge  
Irving, TX 75015

Albert H. Kramer  
Robert F. Aldrich  
Dickstein, Shapiro & Morin, L.L.P.  
2101 L Street, N.W.  
Washington, D.C. 20554

Jay C. Keithley  
Sprint Corporation  
1850 M Street, N.W.  
Suite 1110  
Washington, D.C. 20036

Teresa Marrero  
Senior Regulatory Counsel  
Teleport Communications Group, Inc.  
One Teleport Drive, Suite 300  
Staten Island, NY 10310

Craig T. Smith  
P.O. Box 11315  
Kansas City, MO 64112

Dennis C. Brown  
Brown and Schwaninger  
1835 K Street, N.W., Suite 650  
Washington, D.C. 20006

Michael J. Shortley, III  
Frontier Corporation  
180 South Clinton Avenue  
Rochester, NY 14646-0700

Robert McDowell  
The Competitive Telecommunications  
Association  
1140 Connecticut Avenue, N.W.  
Suite 220  
Washington, D.C. 20036

Ann P. Morton, Esq.  
Cable & Wireless, Inc.  
8219 Leesburg Pike  
Vienna, VA 22182

Danny E. Adams  
Kelley Drye & Warren LLP  
1200 19<sup>th</sup> Street, N.W.  
Suite 500  
Washington, D.C. 20036

Linda Kent  
United States Telephone Association  
1401 H Street, N.W.  
Suite 600  
Washington, D.C. 20005

Charles C. Hunter  
Hunter & Mow, P.C.  
1620 I Street, N.W.  
Suite 701  
Washington, D.C. 20006

James Bradford Ramsay  
National Association of Regulatory  
Utility Commissions  
1201 Constitution Avenue, N.W.  
Suite 1102  
P.O. Box 684  
Washington, DC 20044

Peter Arth, Jr.  
Attorneys for the People of the State of  
California and the PUC of the State of  
California  
505 Van Ness Avenue  
San Francisco, CA 94102

Jackie Follis  
Public Utility Commission of Texas  
7800 Shoal Creek Boulevard  
Austin, TX 78757-1098

Lawrence W. Katz  
1320 Not Court House Road  
8<sup>th</sup> Floor  
Arlington, VA 22201  
James D. Ellis  
Southwestern Bell Telephone Company  
One Bell Center Room 3520  
St. Louis, MO 63 101

Saul Fisher  
NYNEX Telephone Companies  
1095 Avenue of the Americas  
New York, NY 10036

Kathryn Marie Krause  
US West Inc.  
1020 19<sup>th</sup> Street, N.W.  
Suite 700  
Washington, D.C. 20036

William B. Barfield  
BellSouth Corporation  
1155 Peachtree Street, N.E.  
Atlanta, GA 30309-3610

David L. Meier  
Cincinnati Bell Telephone  
201 E. Fourth Street  
P.O. Box 2301  
Cincinnati, OH 45201-2301

Alan N. Baker  
Attorneys for Ameritech  
2000 West Ameritech Center Drive  
Room 4H82  
Hoffman Estates, IL 60196

Lucille M. Mates  
Pacific Telesis Group  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Randolph J. May  
Sutherland, Asbill & Brennan  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2404

Compuserve Inc.  
5000 Arlington Centre Boulevard  
P.O. Box 20212  
Columbus, OH 43220

Joseph P. Markoski  
Squire, Sanders & Dempsey  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 407  
Washington, D.C. 200044

Theodore Case Whitehouse  
Willkie Farr & Gallagher  
3 Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20036

Albert Halprin  
Halprin, Temple, Goodman and Sugrue  
1100 New York Avenue, N.W.  
Suite 650E  
Washington, D.C. 20005

Debra Berlyn  
Competition Policy Institution  
1156 15<sup>th</sup> Street, N.W.  
Suite 310  
Washington, D.C. 20005

David Cosson  
NTCA  
2626 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037

Stuart Polikoff  
OPASTCO  
21 Dupont Circle, N.W.  
Suite 700  
Washington, DC 20036

Lawrence G. Malone  
State of New York Dept of Public  
Service  
Three Empire State Plaza  
Albany, NY 12223-1350

Katherine Abernaty  
AirTouch Communications, Inc.  
1818 N Street, N.W.  
Suite 800  
Washington, D.C. 20036

Mary Mack Adu  
Public Utilities Commission of  
The State of California  
505 Van Ness Avenue  
San Francisco, CA 94102

Todd F. Silbergeld  
SBC Communications Inc.  
1401 I Street, N.W.  
Suite 1100  
Washington, D.C. 20005

Charles C. Hunter  
Hunter & Mow, P.C.  
16201 Street, N.W.  
Suite 701  
Washington, D.C. 20006

Jack B. Harrison  
Frost & Jacobs LLP  
2500 PNC Center  
201 East Fifth Street  
Cincinnati, OH 45202

David L. Meier  
Cincinnati Bell telephone  
201 E. Fourth Street  
P.O. Box 2301  
Cincinnati, OH 45201-2301

James D. Ellis  
SBC Communications Inc.  
175 E. Houston  
Room 1254  
San Antonio, TX 78205

A. Carven Gilbert III  
Bellsouth Corporation  
115 5 Peachtree Street N.E.  
Atlanta, GA 30309-3610  
Lawrence W. Katz  
Bell Atlantic Telephone Companies  
1320 North Court House Road  
8<sup>th</sup> Floor  
Arlington, VA 22201

Campbell L. Ayling  
NYNEX Telephone Companies  
1095 Avenue of the Americas  
Room 3725  
New York, NY 10036

Patricia L.C. Mahoney  
Pacific telesis Group  
140 Montgomery  
San Francisco, CA 94105

Judy Sello  
AT&T Corporation  
Room 3245G1  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Wendy S. Bluemling  
The Southern New England Telephone  
Company  
127 Church Street  
New Haven, CT 06510

J.G. Harrington  
Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036

David W. Zesiger  
Independent Telephone &  
Telecommunications Alliance  
1300 Connecticut Avenue, N.W.  
Washington, DC 20036

Michael S. Wroblewski  
Blooston, Mordkofsdy, Jackson &  
Dickens  
2120 L Street, NW.  
Suite 300  
Washington, DC 20037

Russell M. Blau  
Swidler & Berlin, Ckhtd.  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007

Kathy L. Shobert  
General Communications, Inc.  
901 15<sup>th</sup> Street, N.W.  
Suite 900  
Washington, D.C. 20005

James H. Bolin, Jr.  
AT&T Corporation  
Room 32471-13  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Latham & Watkins  
1001 Pennsylvania Avenue, N.W.  
Suite 1300  
Washington, D.C. 20004-2505

Edward Shakin  
Bell Atlantic Long  
Distance Carriers  
1320 North Court House Road  
8<sup>th</sup> Floor  
Arlington, VA 22201

Mary W. Marks  
SBC Communications Inc.  
One Bell Center  
Room 3536  
St. Louis, MO 63101

Robert M. Lynch  
SBC Communications Inc.  
175 E. Houston  
San Antonio, TX 78205

Ava B. Kleinman  
AT&T Corp  
295 North Maple Avenue  
Room 3252JI  
Basking Ridge, NJ 07920

Robert B. McKenna  
Richard A. Karre  
US West, Inc.  
1020 19th Street, NW  
Suite 700  
Washington, DC 20036

Marlin D. Ard  
Randall E. Cape  
Patricia L. Mahoney  
Pacific Telesis Group  
140 New Montgomery Street  
Room 1517  
San Francisco, CA 94105

Robert J. Butler  
R. Michael Senkowski  
Angela N. Watkins  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

Robert J. Gryzmala  
Robert M. Lynch  
Durward D. Dupre  
Michael J. Zpevak  
Southwestern Bell Telephone  
One Bell Center, Room 3520  
St. Louis, MO 63101

A. Kirven Gilbert III  
M. Robert F. Sutherland  
BellSouth Corporation  
1155 Peachtree Street, NE  
Atlanta, GA 30309

Richard A. Muscat  
Advisory Commission on State  
Emergency  
Communications  
333 Guadalupe, Suite 2-212  
Austin, TX 78701

David G. Frolio  
BellSouth  
1133 21<sup>st</sup> Street, N.W.  
Suite 900  
Washington, DC 20036

Richard A. Karre  
US West Inc.  
1020 19th Street, NW  
Suite 700  
Washington, DC 20036

Mitchell Brecher  
Stephen Holsten  
Fleischman and Walsh  
1400 16th Street, NW  
Washington, DC 20036

John Goodman  
Bell Atlantic  
1300 I Street, NW  
Washington, DC 20005

Gary L. Phillips  
Ameritech  
1401 H Street, NW  
Suite 1020  
Washington, DC 20005

Patrick Berdge  
Public Utilities Commission of  
California  
505 Van Ness Avenue  
San Francisco, CA 94102

Danny E. Adams  
Kelley Drye & Warren  
1200 19th Street, NW  
Washington, DC 20036

Cynthia B. Miller  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399

Jonathan Jacob Nadler  
Squire, Sanders & Dempsey  
1201 Pennsylvania Avenue, NW  
P.O. Box 407  
Washington, DC 20004



Daniel C. Duncan  
Information Industry Association  
1625 Massachusetts Avenue, NW  
Suite 700  
Washington, DC 20036

Andrew D. Lipman  
Swidler Berlin Shereff Friedman  
3000 K Street, NW  
Suite 300  
Washington, DC 20007

William J. Celio  
Michigan Public Service  
Commission  
6545 Mercantile Way  
Lansing, MI 48910

Eric Witte  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Blossom A Peretz  
New Jersey Div. Of the Ratepayers  
Advocate  
31 Clinton Street, 11<sup>th</sup> Floor  
Newark, NJ 07101

Mary E. Burgess  
NYS Department of Public Service  
Three Empire State Plaza  
Albany, NY 12223

Donald C. Rowe  
NYNEX Corporation  
111 Westchester Avenue  
White Plains NY 10604

Leon Kestenbaum  
Sprint Corp  
1850 M Street, NW  
Suite 1100  
Washington, DC 20036

John L. McGrew  
Brian Conboy  
Willkie Farr & Gallagher  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20036

Alfred M. Mamlet  
Steptoe & Johnson  
1330 Connecticut Avenue, NW  
Washington, DC 20036

Teressa Marrero  
Teleport Communications Group  
One Teleport Drive  
Staten Island, NY 10311

Lesla Lehtonen  
Calif. Cable Television Assn.  
4341 Piedmont Avenue  
P.O. Box 1180  
Oakland, CA 94611

Ruth Baker-Battist  
Voice-Tel  
5600 Wisconsin Avenue  
Suite 1007  
Chevy Chase, MD 20815

Joel Bernstein  
Halprin, Temple, Goodman and Sugrue  
1100 New York Avenue, NW  
Suite 650E  
Washington, DC 20005

Werner K. Hartenberger  
Dow, Lohnes & Albertson  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036

William Balcerski  
NYNEX Companies  
1095 Avenue of the Americas  
Room 3723  
New York, NY 10036

Alan Ciamporcero  
Southwestern Bell Telephone Co  
140 New Montgomery Street  
Room 1525  
San Francisco, CA 94105

Richard L. Hetke  
Ameritech  
30 South Wacker Drive  
Chicago, IL 60606